

SPRAWLDEF

Sustainability, Parks, Recycling And Wildlife Legal Defense Fund
802 Balra Drive, El Cerrito CA 94530

25 August 2009

Elizabeth Miller Jennings, Sr. Staff Counsel
State Water Resources Control Board
Office of Chief Counsel
P.O. Box 100
Sacramento, CA 95812-0100
E-mail: bjennings@waterboards.ca.gov

RE: Petition for Review of Waste Discharge Requirements for the Redwood Landfill,
Inc. Class III Solid Waste Disposal Facility, Novato, Marin County, California, Issued by
Regional Board Order No. R2-2009-0053

Dear Ms. Jennings and State Water Resources Control Board:

1. Name, address, telephone number and e-mail address (if available) of the petitioner.

David I. Tam, Research & Development Director, 510-859-5195; daviditam2@gmail.com
Sustainability, Parks, Recycling And Wildlife Legal Defense Fund (SPRAWLDEF)
c/o La Force, 802 Balra Drive, El Cerrito CA 94530

2. The action or inaction of the Regional Water Board being petitioned, including a copy of the action being challenged or any refusal to act, if available. If a copy of the regional board action is not available, the petitioner must explain why it is not included.

SPRAWLDEF challenges the action of San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) in issuing Waste Discharge Requirements for Redwood Landfill Inc. (RLI) -- Regional Board Order No. R2-2009-0053. Copy of WDR not included as already provided by co-appellant No Wetlands Landfill Expansion (NWLE)

3. The date the Regional Water Board acted, refused to act, or was requested to act. **8 July 2009**

4. A statement of the reasons the action or inaction was inappropriate or improper.

First, SFBRWQCB improperly refused to accept as evidence for the record SPRAWLDEF table, "Permitted and Unused Landfill Capacity, 9 Bay Area Counties, as of 2007." SPRAWLDEF (which only became aware belatedly of the 30-day deadline for written submissions), brought paper copies of a one-page table clearly shows that about two-thirds of existing permitted landfill capacity at 15 landfills serving the 9 Bay Area counties is unneeded. The table is based upon disposal information publicly available from the California Integrated Waste Management Board, including data submitted by project proponent RLI.

Second, the SFBRWQCB majority was predisposed to approve an unnecessary and unwise landfill expansion.

Third, State Water Resources Control Board should undertake remedial action to avert future regulatory errors in approving unnecessary major sources of water pollution elsewhere in California.

5. SPRAWLDEF is aggrieved by issuance of the order because it a California non-profit corporation interested in avoiding unnecessary landfill expansions because they undermine expansion of recycling and composting programs and prolong and magnify adverse impacts on water, air, and resource conservation of such projects. It is a plaintiff in a lawsuit (with NWLE) against the County of Marin and Redwood Landfill, Inc. (RLI) challenging the certification of the Environmental Impact Report concerning a major vertical expansion of RLI, and objecting to continued operation of RLI beyond the capacity allowed by an existing permit expected to last until at least 2016.

6 The action the petitioner requests the State Water Board to take.
SWRCB should vacate Regional Board Order No. R2-2009-0053.

7. A statement of points and authorities for any legal issues raised in the petition, including citations to documents or hearing transcripts that are referred to.

Any provisions in the State Water Code regarding lack of obligation to approve an unnecessary water-polluting project analogous to the "First do no harm principles" of the Hippocratic Oath of the medical profession.

The SFBRWQCB staff and board demonstrated an inadequate understanding of best environmental practice regarding recycling, composting, and solid waste management practice in their superficial responses to the testimony by David I. Tam on behalf of SPRAWLDEF (Transcript, pp. 55 - 58), demonstrating that the water-polluting landfill project is not needed by Marin County, supported by testimony of Arthur Boone on behalf of the Northern California Recycling Association (Transcript, pp. 44 - 47). This charge is born out by the discussion and rejection of both witnesses' testimony by three of five Board members approving the WDR

a. Moore (Transcript, p. 7: "Also, I am a resident of Marin County. I am glad we have Redwood Landfill as a way to manage solid waste," in conjunction with his disclosure after the hearing to SPRAWLDEF in conversation that he is a consultant to one or more public agencies whose wastes are accepted at RLI),

b. McGrath (Transcript, p. 82, comments regarding cost which are irrelevant to the situation where the water pollution can be avoided by Marin County exporting its wastes to any of 14 other landfills), and

c. Chair Muller (Transcript, p. 84, chiding NWLE (after professing to "feel your pain") for not suggesting where Marin County's wastes would go if the RLI WDR is not issued, despite the SPRAWLDEF table and testimony which made amply clear that disposal elsewhere would not be a problem.

8. SPRAWLDEF has previously sent copies of an earlier version of this petition to the Regional Water Board and to the discharger, Redwood Landfill Inc.

9. Petitioner SPRAWLDEF could not raise those objections adequately before the regional board because (a) paper copies of table were rejected by SFBRWQCB staff and Chair Muller, despite allowing visual presentations by other witnesses, (b) one of the members, Mr. Moore, did not disclose an apparent conflict of interest prior to the hearing and seek a ruling from SFBRWQCB counsel as to whether he should recuse himself or disclose it to petitioner SPRAWLDEF, and (c) members Moore, McGrath, and Chair Muller all articulated reasons speaking to the issue of the necessity of the RLI expansion for which SPRAWLDEF could and should have been afforded an opportunity to respond (and to refute as irrelevant or specious).

Respectfully submitted,

Attachments

1. SFBRWQCB WDR Order No. R2-2009-0053 (previously mailed copy to SWRCB only)
2. SPRAWLDEF Permitted and Unused Landfill Capacity, 9 Bay Area Counties, as of 2007 (8Jul09)

Cc: Bruce Wolfe, Executive Director, SFBRWQCB, 1515 Clay Street, Oakland CA 94612
Jessica Jones, Redwood Land Fill Manager, PO Box 793, Novato CA 94948
Osha Meserve, Soluri, Emrick & Meserve, 1822 21st Street, Suite 202, Sacramento, CA 95811
Bruce Baum, NWLE Coordinator, 1165 Butterfield Rd., San Anselmo CA 94960
Christopher Sproul, Environmental Advocates, 5135 Anza Street, San Francisco CA 94121
Norman La Force, President, SPRAWLDEF, 802 Balra Drive, El Cerrito CA 94530

Permitted and Unused Landfill Capacity, 9 Bay Area Counties, as of 2007

Permitted Landfills, 9 Bay Area Counties (Data accessible by clicking on http://www.ciwmb.ca.gov/Profiles/Facility/LandFill/LFProfile1.asp?)	Maximum Daily Disposal Tons	Avg Daily Tons Disposed 2007	Unused Capacity (Tons/Day)	Permit Expiration (approx.)
Alameda County (imports restricted)				
1. Altamont/Livermore 01-AA-0009 (regulated by CVRWQCB)	11,500	3,528	7,972	2032
2. Vasco Road/Livermore 01-AA-0010 (imports not restricted)	2,250	1,460	790	2022
3. TriCities/Fremont 01-AA-0008	2,346	688	N/A	2009?
Contra Costa County				
4. Keller Canyon/Pittsburg 07-AA-0032	3,500	2,193	1,307	2030
Napa	0	Export: Keller		N/A
Marin				
5. Redwood/Novato 21-AA-0001	2,300	967	1,333	2024
San Francisco	0	Export: Alameda		N/A
San Mateo				
6. Ox Mountain/Half Moon Bay 41-AA-0002 (imports restricted)	3,598	1,895	1,703	
Santa Clara				
7. City of Palo Alto (imports restricted) 43-AM-0001	200	23	177	2011
8. Guadalupe/San Jose 43-AN-0015	3,650	660	2,990	2025?
9. Kirby Canyon/San Jose 43-AN-0008	3,600	571	3,029	2022
10. Newby Island/San Jose 43-AN-0003	4,000	1,668	2,332	2025
11. Pacheco Pass/Gilroy 43-AA-0004	1,000	58	942	2104
12. Zanker Road/San Jose 43-AN-0007	1,300	21	1,279	2018
13. Zanker Road Composting/San Jose 43-AN-0001	200	33	167	N/A
Solano				
14. Hay Road/Vacaville 48-AA-0002	1,200	454	746	2077
15. Potrero Hills/Suisun City 48-AA-0075	3,400	2,766	634	2011
Sonoma				
16. Central/Cotati 49-AA-0001 (Closed by NCRWQCB; to be privatized/reopened after cleanup)	2,500	Export: Marin & Solano		REOPENS 2011?
Bay Area Total	N/A	N/A	23,101	N/A

David Tam, SPRAWLDEF, c/o La Force, 802 Balra Drive, El Cerrito CA 94530; 510-859-5195; daviditam2@gmail.com; 8 July 2009

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7 August 2009

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RE: Petition for Review of Waste Discharge Requirements for the Redwood Landfill, Inc. Class III Solid Waste Disposal Facility, Novato, Marin County, California, Issued by Regional Board Order No. R2-2009-0053

Dear Ms. Jennings and State Water Resources Control Board:

Sustainability, Parks, Recycling And Wildlife Legal Defense Fund (hereinafter "SPRAWLDEF") concurs in the No Wetlands Landfill Expansion (hereinafter "NWLE") petition to the State Water Resources Control Board ("State Board") for review of the Waste Discharge Requirements ("the WDR") issued on July 8, 2009 by the California Regional Water Quality Control Board, San Francisco Bay Region ("SFBRWQCB"), by Regional Board Order No. R2-2009-0053, for Redwood Landfill, a Class III municipal refuse disposal site owned and operated by Redwood Landfill, Inc ("RLI"). SFBRWQCB WDR Order No. R2-2009-0053 is attachment 1 (paper copy only, not emailed).

1. SFBRWQCB improperly refused to accept as evidence for the record SPRAWLDEF table, "Permitted and Unused Landfill Capacity, 9 Bay Area Counties, as of 2007" (attachment 2). Our intent in submitting this table, which shows that 13 Bay Area landfills regulated by SFBRWQCB and two other nearby landfills (Altamont and Sonoma County, regulated by other regional boards) available unused disposal capacity in excess of 23,000 tons per day, at a time when Redwood Land Fill was accepting 967 tons per day (361-day-per-year calculation basis). SFBRWQCB therefore exhibited obliviousness to a fundamental fact of the Northern California solid waste collection/disposal/recycling industry – the abundant oversupply of landfills, including adequate uplands disposal capacity to make feasible the rapid phaseout of remaining bayside landfills. Fundamental facts about Bay Area landfilling should be of major concern both for the sheer economic size of the industry, about one percent (1%) of the regional economy, and the serious impacts of its effluents. Redwood, TriCities (Fremont), and Newby Island (Milpitas) are the only three landfills within the jurisdiction of the Bay Conservation and Development Commission.

2. The SFBRWQCB majority was predisposed to approve an unnecessary and unwise landfill expansion. Three of the five SFBRWQCB members who voted to issue the WDR for RLI expressed positive views about landfilling inconsistent with enlightened state and local government policies to phase out bayside landfilling and to reduce landfill burdens by composting, recycling, reuse, and repair of up to 75% by weight of wastes from landfills.

a. One member, a habitat restorationist with an engineering degree, expressed a preference for more rather than less permitted landfill capacity, ostensibly to reduce illegal roadside dumping. He is an employee of a large public entity whose property is traversed by a state highway which is a major route to a solid waste transfer station. To this member's credit, he did understand the critique of NWLE of the engineered five-foot separation of waste material from water, and countered it with his understanding of the adequacy of the proposed requirement.

b. A second member expressed a generalized civic obligation to accept landfilling as necessity, with the perceptible intent to hold his experience up as more suitable behavior than that of NWLE members. He described himself as a

neighbor of what was at one time the largest Bay Area landfill. Actually, unlike RLI, it is in an upland canyon, not in a bayside creek. It has small impacts on his community, because it receives about 95% by weight of its material from trucks that do not traverse its streets. He expressed confidence in the thoroughness of SFBRWQCB staff work, and did not acknowledge the plausibility of NWLE's analyses of water impacts.

c. A third member, a water quality consultant to numerous North Bay special districts (presumably including users of Redwood Land Fill), after the meeting conversationally expressed his conviction to a SPRAWLDEF representative that Marin County needs the Redwood Land Fill. To hold such convictions in the face of the public controversy in his home county could, charitably, be characterized as a touching faith in gradualism untenable in view of climate change. Also, he was in conflict of interest if any of his Marin County clients use RLI

3. State Water Resources Control Board should undertake remedial action to avert future regulatory errors elsewhere in California. SPRAWLDEF concurs in the appeal of NWLE as an act of trust in that public interest organization's dedication to truth and environmental sustainability. It is up to the State Water Resources Control Board to hear their appeal on its merits, and to reject the WDR.

SPRAWLDEF has filed its appeal, not to add any new technical grounds for appeal, but to make your board aware that there is significant room for improvement in how WDR's for solid waste landfills are considered by at least one of the nine regional boards. We think the State Board should consider remedial training for the regional boards and their staffs to prevent future fiascos like this approval.

In 1984, the SFBRWQCB gave Contra Costa County five years to find an upland canyon site for a replacement for a bayside landfill (Acme, Martinez). After protracted economic and political conflict, the Keller Canyon Land Fill was opened in a little over seven years. That is what should have been done in this instance, 25 years later, to a landfill which has at least eight years' remaining capacity and there are 14 other landfills to which its wastes could be transported.

Currently, there are 128 permitted landfills in California. Unlike Naples, there is no realistic specter of garbage in the streets that should haunt elected officials of Marin County or any other California community, or officials of the water quality infrastructure, because a landfill with inadequate water quality safeguards is blocked. California – not just the Bay Area – has abundant surplus landfill disposal capacity. Let the Redwood Land Fill WDR serve as a test case for whether water quality concerns in California are appropriately safeguarded, based on the approval of a WDR for a wholly unnecessary landfill.

Respectfully,

David I. Tam (510-859-5195; daviditam2@gmail.com)
SPRAWLDEF Research and Development Director

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